

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Comprehensive Review of Universal Service)	FCC 05-124
Fund Management, Administration, and)	
Oversight)	

COMMENTS OF THE EDUCATION AND LIBRARY NETWORKS COALITION

INTRODUCTION

Pursuant the Commission's Public Notice, FCC Docket No. 05-124 ("Notice"), released June 14, 2005, the Education and Libraries Networks Coalition (EdLiNC) submits these comments. While the Public Notice request comments on a number of issues, we will only address those issues which are directly related to the Universal Service Schools and Libraries program.

EdLiNC is a coalition of nearly two dozen education and library organizations.¹ These diverse organizations, representing public, private, urban, and rural schools and libraries, have worked together explicitly for the good of the Universal Service program for schools and libraries. Over the years, EdLiNC has filed numerous comments with the Commission.² Our comments below are arranged in the order in which the paragraphs appear in the Notice.

¹ A list of EdLiNC members is attached as Appendix A.

² EdLiNC's comments before the FCC are available online at <http://www.edlinc.org>

EDLINC BELIEVES THE APPLICATION OF “GOVGAAP” HAS SERIOUS
IMPLICATIONS FOR THE SCHOOLS AND LIBRARIES PROGRAM (10)

Since it commenced operation in 1998, the Schools and Libraries program--or E-Rate--has played a leading role in connecting schools and libraries to the Internet. In 1997, only 14% of public school instructional classrooms were connected to the net; as of 2003, classroom Internet access stands at 93%. Nearly all public library outlets are now able to offer Internet access to their patrons. Private schools have benefited substantially, as well, with 88.4% of Catholic schools providing student Internet access. The E-Rate's continuing importance to schools and libraries is easily observable by the fact that, in each funding year, requests for E-Rate discounts vastly exceed the \$2.25 billion available annually. These funds are essential if schools and libraries are to remain connected to the Internet, the information super highway.

Beyond these impressive figures, though, the E-Rate is essential to schools and libraries for the educational and employment opportunities that it helps provide. A 2003 report commissioned by EdLiNC, found that the E-Rate program: (1) is an important tool for economic empowerment in underserved communities; (2) is beginning to bring new learning opportunities to special education students; (3) is transforming education in rural America through distance learning and Internet-based educational content; and (4) is helping schools improve student achievement and comply with the No Child Left Behind Act.³

As the Commission is aware, the application of government generally accepted accounting principles (“GovGAAP”) led to a suspension of the E-Rate program for three months, during which time thousands of applications from schools and libraries languished in the offices of the E-Rate's administrator, the Universal Service Administrative Company (“USAC”). This

³ “E-Rate: A Vision of Opportunity and Innovation,” (2003), <http://www.edlinc.org/pdf/ERateReport070803lores.pdf>.

de facto shutdown of the program occurred because: (1) the Commission determined that a particular provision of the Anti-Deficiency Act (ADA), which bars federal agencies from obligating funds without adequate cash on-hand to cover those obligations, applied to the E-Rate; and (2) the Office of Management and Budget classified USAC's funding commitment decision letters ("FCDLs") as "obligations" of federal funds. As a consequence of these determinations, USAC had at that time insufficient cash in its accounts to cover the E-Rate FCDLs. At the same time, concerns were expressed that the universal service high cost fund's projections system might also fall within the ambit of the ADA, potentially causing a shutdown of that program. Fortunately, the 108th Congress passed and the President signed legislation to exempt for twelve months all of universal service from that ADA provision, thereby allowing E-Rate discounts to flow again.

EdLiNC would like to take this opportunity to reiterate, consistent with the United States Circuit Court of Appeals in Texas Office of Public Utility Counsel, et al. v. Federal Communications Commission (decided July 30, 1999), that E-Rate funds are not federal funds and are therefore not subject to the Anti-Deficiency Act.⁴ E-Rate funds are fees collected from telecommunications companies by USAC which are held outside the United States treasury in the Universal Service Fund. Despite this decision, the reality is that the current exemption from ADA expires at the end of this year. As the Commission is aware, EdLiNC will continue to seek a legislative remedy for this problem. For without the exemption, given the above regulatory determinations, the Commission will face the Hobson's choice of either shutting down the E-Rate and/or other universal service programs (rural healthcare, high cost telephone service, and low-income telephone service) for a period of time, thus depriving needed E-Rate discounts to

⁴ Texas Office of Pub. Util. Counsel v. FCC, 183 F.3d 393 (1999).

deserving public and private schools and libraries, or raising the universal service collection rates dramatically, thereby virtually imposing major telephone rate hikes for consumers.

EDLiNC CAUTIONS THE FCC ON CHANGING THE PERMANENT ADMINISTRATOR OF THE SCHOOLS AND LIBRARIES PROGRAM (11 & 12)

Since the Commission appointed USAC as the permanent Administrator of the Schools and Libraries program the E-Rate program has gone through many changes, in which the program has been progressively made better. By changing the permanent Administrator of the Schools and Libraries program, a collective history of a program could be lost. Also the cost of transferring the program to another administrator would be substantial. Challenges also exist because of a lack of clear and mutual understanding between USAC and FCC on jurisdiction, affecting decisions, and implementation of rules. EdLiNC is the first to admit that the program is not perfect. USAC continues to have problems which plague the program. One issue can be traced to an absence of a clear and mutual understanding between USAC and FCC on jurisdiction, affecting decisions, and implementation of rules. Also a revision in the structure might cause an unnecessary disruption to contributors and beneficiaries of the program. EdLiNC believes that the E-Rate program is not a federal program. This program should be maintained outside the U.S. Government as a separate entity.

EdLiNC supports changes that would increase opportunities for education of participants and would increase opportunities for communication. Increasing access and participants in the E-Rate program rests strongly on the need for educating applicants about the process.

While customer service and relations have improved with USAC over the years, there is still room for improvement. One suggestion would be to hire more educators or librarians as

employees. EdLiNC would also like to recommend that which ever entity be chosen as the Administrator of the program that schools and libraries have a voice on the board.

EDLINC APPLAUDS THE COMMISSION'S RECOGNITION IN THE DIFFERENCE OF ERRORS (22)

EdLiNC applauds the Commission's recognition that ministerial errors and intentional fraud are wholly different. Audit and site visit findings that fail to differentiate between these two categories do a disservice to the entire program, by inflating the number of serious problems associated with the E-Rate, and to individual applicants, some of whom find themselves unfairly lumped into the category of problem plagued applicants because of a few clerical errors. For the good of the program and to preserve the reputations of individual applicants, we urge the Commission to take whatever steps necessary to ensure that all future audit and site visit reports delineate the significant differences between ministerial errors and intentional fraud.

EDLINC ENCOURAGES THE COMMISSION TO CREATE RELEVANT AND FLEXIBLE PERFORMANCE MEASURES FOR E-RATE (24)

Paragraph 24 points to the need for the Commission to develop performance measures for the E-rate program. Specifically, the NPRM states that any performance measures must be "highly relevant in measuring program value, accomplishments, and results" and goes on to state that "[we must] measure only the goals of the program and not stray beyond our jurisdiction." We strongly urge the Commission to use performance measures based on E-rate's goals of connectivity, access, and deployment of advanced services. We do not support the use of other performance measures that are beyond the scope of the FCC's authority to create a program that

promotes access to advanced services such as impact on learning outcomes. There are other agencies whose responsibility it is to undertake these specific studies.

Although schools and public libraries have very different core missions, they share a vision as far as E-rate is concerned – that of equitable access. The success of this program should be gauged on the widespread deployment of evolving technological advances, namely broadband capacities, since high-speed Internet access and sufficient capacity for video-based distance learning and other school and library needs are the key to providing successful services to teachers, students and library patrons. We strongly feel that E-rate can play a significant role in the Administration's stated goal of universal broadband deployment by 2007.⁵ We encourage the Commission to consider performance measures based on universal broadband penetration and connectivity speed at participating schools and libraries.

EDLINC ENCOURAGES THE COMMISSION TO FOCUS ON CONNECTIVITY AS A PROGRAM MEASUREMENT (27)

The E-Rate provides \$2.25 billion in discounts annually for advanced, affordable telecommunications services, Internet access and internal connections to public libraries and public and private schools. In the first seven years (1998-2004), \$14.6 billion in discounts have brought the Internet and new information technologies to tens of thousands of public and private schools and libraries, and to over a million classrooms.

The promise of the E-Rate is straightforward: to assure that all Americans, regardless of income or geography, can participate in and benefit from new information technologies, including distance learning, online assessment, web-based homework, enriched curriculum,

⁵ *President Bush meets with first-time homebuyers in NM and AZ.* (March 26, 2004). Available: <http://www.whitehouse.gov/news/releases/2004/03/print/20040326-9.html>.

increased communication between parents, students and their educators, and increased access to government services and information.

The E-Rate program is a technology program that must be measured and evaluated as the technology connectivity program it is. This is not an education program, but a connectivity program originally designed to evolve with technology. The program was never intended to be a one time investment, but rather a program that is specific to a locale and evolves in the same manner as the community. The original goal of this program was to connect all classrooms and libraries to the internet. At this time, there are still classrooms and libraries that have not been connected. The schools and libraries that are should also be evaluated on connectivity. It might be that one classroom is connected or one library patron can use the internet and that in the opinion of this coalition is not enough. All classrooms and libraries should be connected with current technologies.

By comparing the E-Rate program to the U.S. Department of Education's Enhancing Education Through Technology (EETT) program, one is literally comparing "apples to oranges". The EETT program is an appropriated education program that provides funds for innovative initiatives to support the integration of education technology into classrooms to improve teaching and learning. The E-Rate program provides the connectivity to the classroom. In the case of a private school, programs are offered through the LEA. Direct funding does not go to the private school for this education program. Libraries are excluded from this education program. Equitable access is a key piece of the E-Rate program.

EdLiNC believes that the E-Rate program should be evaluated in terms of access to connectivity. We do not support the use of other performance measures that are beyond the scope of the FCC's authority to create a program that promotes access to advanced services such

as impact on learning outcomes. There are other agencies whose responsibility it is to undertake these specific studies.

USAC and FCC lack statutory authority to measure outcome or performance of the users of the E-Rate program.

THE E-RATE PROGRAM IS NOT AN EDUCATION PROGRAM BUT A CONNECTIVITY PROGRAM (28)

The Commission seeks meaningful ways to distinguish the impact of E-rate funds from other governmental and non-governmental programs that support telecommunications services or facilities similar to the E-rate program. The Commission also solicits comment on whether the performance measures implemented by the Department of Education to evaluate implementation of the Enhancing Education Through Technology (“EETT”) program are instructive for E-rate purposes.

EdLiNC wishes to emphasize that the E-rate, unlike the EETT program and other programs administered by the U.S. Department of Education, is not an education initiative. The E-rate is a telecommunications program serving strictly as a mechanism for ensuring that schools and libraries are connected to the nation's telecommunications infrastructure. Thus, the Commission should not attempt to isolate the impact of E-rate supported services on student achievement, nor should it create program goals or performance measures tied to student achievement. Instead, the Commission's performance measures should focus only on telecommunications connectivity and should not stray beyond the agency's jurisdiction.

As the Commission stated in the NPRM, the E-rate is the only federal program that provides schools and libraries discounted access to telecommunications services. Other public and private initiatives support technology and education technology projects, but no other national programs exist solely for the purpose of connecting advanced communications "have

notes" to the communications network. Thus, attempting to compare the program to other federal technology initiatives is not a useful study. A more instructive analysis would focus on the significant recurring demand for E-rate dollars compared to available support. Applications for E-rate funding have typically exceeded the \$2.25 billion spending cap implemented by the Commission by at least \$1 to \$2 billion during the last three funding years. The incredible demand for E-rate dollars speaks for itself, demonstrating the widespread need for this unique funding. The Commission should implement performance goals designed to address the unmet connectivity needs of the thousands of schools that are annually precluded from participating in the program because of inadequate funding.

EDLINC AGREES THAT MODIFICATIONS IN THE E-RATE APPLICATION TIMELINE ARE NECESSARY (29)

We applaud the FCC for looking for ways to improve efficiency within the E-Rate application process. The application process is a critical element of this efficiency. Over the past seven years, the application timelines have fluctuated. This has caused confusion at the local level. It is difficult that the Form 471 window continues to fall over the holidays for school districts and libraries. While this may not be able to be avoided, it would be helpful for the application windows to be set and carry over from year to year. This way an applicant will know when to expect the window every year and can plan accordingly. At the same time, we encourage USAC to continue its efforts to speed up the issuance of the commitment letters. When these letters are late to the applicants, it produces a ripple effect that will eventually cause more work for the school districts and libraries.

In addition, some of the deadlines on additional forms submissions are rotating based on the date a district or library receives their commitment letter. This is true in the case of the Form

486. It would be helpful to have a uniform set deadline so applicants would know when to respond or send applicants an email reminding them of their specific deadline. This would ensure that schools and libraries that followed the process throughout do not lose access to their discounts based on a missed deadline.

EdLiNC urges the FCC not to consider measurements to capture the cost per student or patron. This is not a measure of equity or equality because it fails to take into account the added cost of providing services in specific locations, such as rural America. The FCC and USAC should not ask for more information on the application forms than is necessary. Lengthy forms often act as a deterrent for small entities to apply.

Finally, timelines should be put in place for the appeals process. It is not fair for the applicants to be held to a series of strict deadlines while appeals can take months and in many cases years. Appeals can sit at the FCC for long periods of time with little communication with the applicant. This often complicates the applicant's application for the following year. Also, in many cases the applicant is not aware of the specific reason they were denied E-Rate discounts. If they were able to find out the specifics of their denial, they may choose not to appeal and in many cases not make the same mistake on the next year's application. Communication and consistency are the two key ways that the E-Rate process can be improved.

PERFORMANCE MEASURES FOR THE E-RATE PROGRAM SHOULD BE BASED ON CONNECTIVITY (30)

The Commission seeks comment on how to measure the Universal Service System's impact on the level of telecommunications and information services available in the nation's schools and libraries. EdLiNC agrees with the Commission's statement that the FCC should be "careful to measure only the goals of the program and not stray beyond our jurisdiction."⁶ Thus, the Commission should not attempt to isolate the impact of E-Rate-supported services on student

⁶ NPRM ¶18.

achievement, nor should it create program goals or performance measures tied to student achievement.

EdLiNC urges the Commission to assess the program's success based upon the criteria set forth by the Communications Act, which articulates Congress's intention to ensure that schools and libraries maintain a level of telecommunications connectivity consistent with other sectors of the information economy. The Commission should, as the Communications Act directs in Section 254, measure E-Rate's success on whether schools and libraries have access to a "constantly evolving" level of telecommunications and information services, including advanced services, comparable to the services offered through "the normal operation of the free market" and that are being deployed in public telecommunications networks by telecommunications carriers.⁷

EdLiNC urges the Commission to use its periodic "Section 706 Report" concerning the availability of advanced telecommunications capability in the United States, the twice yearly data published by the Commission regarding advanced and high-speed services, and other relevant domestic and international broadband measures, as benchmarks for determining whether the E-Rate is successfully keeping the nation's classrooms and libraries on par with the advanced communications services demanded by other high tech sectors of the economy.

The Commission should measure: (1) the degree to which students, educators, and library patrons have access to advanced communications services (A single Internet connection is not a sufficient level of connectivity. EdLiNC believes all educators and students should have access to advanced communications services in their classrooms, and all library patrons should have reasonable access to access to advanced communications services. These facilities must have ample connections to serve their users.); and (2) the speed at which schools and libraries are

⁷ Communications Act, 47 U.S.C. § 254(c)(1)(A).

connected (Sufficient bandwidth should be available at every school or library workstation to support the services offered by the participating institutions. Access and bandwidth benchmarks and measures must also periodically increase to ensure schools and libraries are receiving a “constantly evolving” level of service.

The Commission’s USF outcome measures should also contribute to meeting President Bush’s call for “universal, affordable access for broadband technology by the year 2007.” (Remarks of President George W. Bush, March 26, 2004). The President’s broadband goals are consistent with the Universal Service System’s goals, particularly the E-Rate, which provides broadband access to populations typically located on the wrong side of the digital divide. Providing broadband capacity to the nation’s schools and libraries, and ensuring that they remain connected to the telecommunications network, is an absolutely critical step in meeting this vital national goal. The Universal Service Fund is one of the mechanisms designed to help accomplish the President’s broadband goals, ensuring that millions of otherwise unconnected Americans have access to telecommunications services, including advanced services and it thus should be used aggressively to move the nation’s communications infrastructure forward.

EDLiNC OPPOSES A FORMULA-BASED SYSTEM FOR THE E-RATE PROGRAM (33)

EdLiNC strongly opposes the Commission’s proposal to transform the E-Rate into a formula-based system on three grounds: 1) We do not believe that the Commission has the statutory authority to change the program from a discount-based system to a formula system; 2) We believe that many of the communities that this program was intended to serve would be harmed significantly through the imposition of a formula on the program; and 3) We cannot conceive of a formula that would ensure the most important features of the program – its support

for high cost and low income applicants and its locally-driven nature – could be retained under a formula-based system.

First, neither the statute, the Federal State Joint Board on Universal Service, the Congressional authors of the E-Rate, nor the Commission itself supports a block grant as an appropriate method of operating the E-Rate program. The statute specifies clearly that eligible program applicants be entitled to “discounts” on eligible services.⁸ The Federal State Joint Board on Universal Service, in its recommendations on establishing the E-Rate, and the Commission itself, in its foundational order on the program, interpreted the statute as requiring a discount.⁹ In fact, the Joint Board’s Recommendations explored and rejected the concept of establishing the E-Rate as a block grant, stating specifically: “We also do not endorse the disbursement of discounts in the form of block grants to states.” It buttressed this recommendation with language from a letter, signed by the authors of the E-Rate provision – Senators Snowe, Rockefeller, Exon and Kerrey – and 12 other Senators that declared that turning the E-Rate into a block grant did not comport with their vision of the program: “Such grants would be incompatible with the statute’s architecture of discounts based on affordability on flexible bona fide requests submitted by schools and libraries. Block grants are not based on individual needs and priorities of schools and libraries for education technology. Affordability cannot be determined under a block grant approach.” Based on these facts, EdLiNC does not believe that the Commission has the legal authority to change the E-Rate to a formula-based program without additional action by Congress.

⁸ Telecommunications Act of 1996, Section 254 (h)(1)(B).

⁹ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87 (1996); and Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997).

Second, even if the Commission was legally authorized to make this change, EdLiNC believes that a formula-based program would adversely impact rural and low-income schools and libraries and private schools. Conceived by and championed by Senators from rural states, the E-Rate program has focused on delivering E-Rate supported services to schools and libraries located in high cost and low-income areas. Additionally, an important feature of this program has always been its interest in ensuring that private school students, many of who attend resource-strained parochial schools, gain access to the resources and opportunities available online. In turning the E-Rate into a formula program based on size, the Commission would limit the amount of resources flowing to small rural schools and libraries, depriving them of the ability to build and use advanced technologies and, most importantly, to gain access to academic and economic resources available online. Moreover, to the extent that a formula program could be interpreted as turning the E-Rate into a full-fledged federal program, many parochial schools would be unable to participate because of state and local prohibitions on their receipt of federal monies. In sum, while some applicants might benefit from a formula program because of reduced paperwork and increased funding, too many others would be damaged, some devastatingly, for EdLiNC to even consider supporting the proposed formula.

Third, EdLiNC has major doubts as to whether the Commission could develop a formula that would meet the needs of E-Rate applicants and preserve the local nature of this program. We believe that a fundamental obstacle to developing any formula is the inability to determine, on a per student or per library patron basis, how much money each eligible entity should receive because no formula could capture the diverse needs of each eligible entity. Where some seek support only for simple telephone service, others seek E-Rate support for high speed and high bandwidth technologies. EdLiNC firmly believes that the size of the entity should not constrain

its technological and educational aspirations and we are extremely concerned that any formula would do just that.

EDLiNC APPLAUDS THE COMMISSION'S DESIRE TO STREAMLINE THE E-RATE APPLICATION PROCESS (37)

EdLiNC applauds the FCC efforts to streamline the E-Rate application process by recognizing the difference between applications for priority one services versus priority two. We support the FCC's initial conclusion that there be a multi-year streamlined process for priority one services. This should be implemented through 3 year applications for recurring services. An applicant would only need to file their Forms 470 and 471 once and the application would be good for 3 years. This would streamline the process greatly, as well as encourage applicants to pursue multi-year contracts generating more savings over single year or month to month contracts.

Schools and libraries do not apply for the E-Rate program because the overall process is seen as bureaucratic and complicated. This is even truer for the smallest applicants. Many times the staff in small schools or libraries is responsible for so many different things that adding on the complication of the E-Rate process can be seen as more trouble than it is worth. In the case of schools, they are used to the application process and language used by the U.S. Department of Education. Shifting to the language of the FCC is often difficult for schools and libraries to do. Therefore, EdLiNC supports the introduction of an E-Z form for priority one services. This form, similar to ones used by the IRS for tax purposes, would allow individual applicant to just enter the necessary data for these specific recurring services. Having easier access to priority one services would make applying more appealing for the smallest schools and libraries.

EdLiNC would also support the use of a complete online application process. Applicants could establish PIN numbers that would allow them not only to file their applications online but would also allow them to monitor their process through the system. This would add more information and certainty into the process. It could also be used to remind applicants of upcoming deadlines. This change in the application process would help to reduce any ministerial error caused by an applicant who missed a deadline.

The FCC duly notes the impact of delays on schools and libraries in the application process. Such delays make future planning that much more difficult. For instance, when the Anti-Deficiency Act was imposed on E-Rate, it delayed the distribution of commitment letters for over five months. This made it nearly impossible for schools and libraries to plan for the next year's applicant when they were not even informed as of yet of their discounts for this year. It is also vitally important that USAC issue commitment letters as soon as possible. By limiting the delay in getting out commitment letters, applicants are able to do more careful planning and get a jump start on any necessary appeals. The other concern for applicants is the long delay in the resolution on appeals. This uncertainty makes it more difficult for applicants to plan. The FCC should respect the restraints that the process puts on applicants and should clear appeals in a more timely fashion.

EDLINC BELIEVES SERVICE LIFE OR DEPRECIATION GUIDELINES ARE
UNNECESSARY (40)

EdLiNC believes the creation of guidelines pertaining to service life or depreciation of equipment is unnecessary. The rapidly changing nature of technological services and equipment would render such lists obsolete, and require too much administrative time/resources to be cost productive. Furthermore, two current rules – one that bars applicants from transferring

equipment until three years have elapsed from the date of its purchase and another that allows applicant sites to receive internal connections funding only twice every five years – already significantly constrain the ability of applicants to transfer and purchase new equipment. Adding service life or depreciation guidelines to further control applicant transfer and purchase of equipment seems to be redundant and burdensome to more applicants.

EDLINC VALUES THE E-RATE TECHNOLOGY PLANING PROCESS AS A DISTINCT PROCESS ALIGNED TO THE GOALS OF THE PROGRAM

EdLiNC strongly urges the FCC to keep the goals of the E-Rate program--to connect all classrooms and libraries to the Internet--separate from those of other federal education programs. The technology plans required for the E-Rate applicant are related to the goals of the E-Rate program; i.e., the five components of the plan are designed to ensure that the requested items are needed to accomplish the connectivity goals and the ability of the applicant to make effective use of the services/equipment in fulfilling those goals. The educational objectives of other federal programs are formulated to facilitate the integration of technology into the teaching and learning process. These programs have their own strategies for measuring such outcomes and they should not be combined with those of the E-Rate program and vice versa.

EDLINC SUPPORTS ESTABLISHING CRITERIA FOR VENDORS AND CONSULTANTS (43)

The Commission has requested comments on standards of conduct for both service providers and consultants. We strongly support that actions be taken with regard to those who commit fraudulent or otherwise unscrupulous actions in the program. Those who defraud the program not only negatively impact those schools and libraries with whom they directly work, but they also impact all schools and libraries across the country when their actions affect the stability of the program. However, we do not believe it is the role of the FCC to develop standards of conduct or certification requirements for service providers and/or consultants. State

and local governing authorities responsible for procurement procedures are in the best position to establish selection criteria that will ensure cost-effective, reliable, and ethical providers of service. EdLiNC does believe, however, that the Commission should develop more information and provide more outreach to the applicant community about what a good service provider does and does not do, including for example, a process for ensuring transparency in billing among service providers, applicants, and USAC. This information could be posted prominently on the SLD website and be designed to address: (1) the types of questions applicants should be asked of a high-quality service provider prior to entering into an agreement; (2) the reasonable expectations of both the applicant and the service provider if an agreement is reached; and (3) the types of activities or conduct that a high-quality service provider will render to fulfill the agreement and comply with all rules of the E-Rate program.

While we acknowledge that there have been a small handful of bad actors who have taken advantage of this program in one form or another, creating additional hurdles for those who are honest, ethical participants in the program creates just one more level of bureaucracy and complexity in this program.

ROLLOVER DOLLARS ARE CRITICAL TO HELPING MEET THE HIGH DEMAND FOR E-RATE (60)

EdLiNC strongly urges the FCC to reallocate unused funds into the current funding year. We encourage the FCC to streamline the process of carrying over the funds to encourage increased utilization of these dollars. In any event, we caution the FCC to leave enough carry-over dollars to fund any remaining appeals. The rollover funds should be made available to all E-Rate beneficiaries. At no time should these funds be block granted in such a way that would prevent private schools or libraries from equitable access.

EDLINC OPPOSES THE DEVELOPMENT OF COSTLY NEW AUDIT REQUIREMENTS

(68 &69)

We recognize that audits are an important tool for maintaining program integrity. E-rate applicants accept audits as a part of the program, proactively plan for the possibility of an audit by holding on to key records, and comply with audit requirements. However, we strongly feel that the suggestion that applicants secure an annual independent audit is a misguided one.

E-rate is an essential resource for all public libraries and schools, but it can be an absolute lifeline for the smallest of these institutions. Requiring audits that may be more costly than the amount a school or library is receiving from the program will have a huge negative impact on program participation. We would instead encourage the Commission to simplify the program, clarify the program requirements, and improve education and communication. This will improve the quality of the applications received. As a result, errors will be less likely on those applications that are not complex and other existing audit mechanisms can focus on those applications which are more likely to contain significant program violations.

EDLINC CAUTIONS THE COMMISSION ABOUT THE IMPOSITION OF INDEPENDENT AUDITS ON APPLICANTS

EdLiNC strongly supports the FCC's clarification between ministerial error and fraud. The complex labyrinth of FCC and USAC rules on the E-Rate process makes these errors more likely. The FCC should take steps to make sure that all rules and procedures are published clearly and when possible, in the simplest terms possible. Often when information is published by the FCC, it is more complicated for the schools and libraries. Using common language and as little technical verbiage as possible would go a long way in increasing understanding. All rules

and procedures to which applicants will be held responsible should be published and easily accessible.

While the FCC and USAC should be commended for their efforts to safeguard against waste, fraud and abuse in E-Rate, they should not overextend their policies in the case of audits. First of all, public schools are public agencies that are accountable to their states and their communities. Already school districts undergo frequent audits to ensure the proper use of public funding. If there are additional expenses required to apply for E-Rate discounts, smaller applicants would choose not to apply. They do not have the resources and the cost of the audit would exceed the amount of money they would receive from the program. In addition, USAC dollars spent on increased auditing would reduce the amount of money available for E-Rate discounts. With demand consistently exceeding availability, this decision should not be taken lightly. The student's and the library patron's best interests must be taken into consideration. Reducing the overall amount of available discounts is clearly not in their best interests.

Finally, when audits are conducted, they should be completed using the available rules at the period being audited, not the currently available rules. It is not fair to hold applicants accountable to rules that were not in existence at the time. Applicants should also be provided audit reports. They can be a vital and informative tool for applicants, service providers and other stakeholders. It is also important that timing is considered when audits are conducted. It is not fair to applicants to conduct audits are conducted during rush times and deadlines in the current year's application.

PREMATURE CAPS ON THE PROGRAM COULD LIKELY DESTABILIZE THE PROGRAM (90)

EdLiNC strongly supports reasonable efforts to curb waste, fraud and abuse in the E-Rate program. However, we believe that all waste, fraud and abuse efforts must be weighed against

the need not to chill applicant interest in the program by imposing onerous burdens on them. At this time, we believe that the imposition of any type of cap or gold-plating rules, both aimed at ensuring program integrity, would be premature and likely destabilizing to the program. The new program requirement that allows applicants to receive Priority II discounts only twice every five years, which the Commission created expressly to deter waste, fraud and abuse, has only just gone into effect this program year and is intended to address the same concerns as a new cap or gold plating rules. We believe that it should be allowed an opportunity to work before imposing additional new rule compliance burdens on applicants.

EdLiNC agrees conceptually with the Commission that establishing and publicizing “best practices” would be very helpful to applicants. However, the devil may be in the details here. We are unclear what the Commission would define as a best practice, who would administer this initiative, and from where financial support for such a program would come. We do not support the creation of any new initiative that would divert substantial sums away from providing school and library discounts.

EdLiNC agrees with the Commission’s surmise that establishing a three-bid minimum requirement under the competitive bidding rules is impractical and should not be adopted. Many rural schools and libraries would encounter substantial difficulties complying with such a requirement because of the dearth of service providers in their areas. Additionally, we object to the premise of this proposed rule – that applicants themselves are not actively seeking the best prices for services and not soliciting as many bids as possible. To date, we are unaware that any data has been collected on the average number of bids an applicant receives, so we fail to understand how anyone can determine that a problem exists. Additionally, it would be against

the best interests of applicants, all of who must pay a share of eligible service costs themselves, to make little effort to seek multiple competitive bids from providers, where possible.

Lastly, EdLiNC opposes the Commission's proposal to establish maximum prices for services. This proposal would not only adversely impact schools and libraries located in high cost areas, but would also potentially hinder Gulf Coast schools and libraries attempting to rebuild their infrastructures. For example, we understand that the price of creating a WiFi connection in New Orleans following Hurricane Katrina has just escalated dramatically.

EDLiNC ENCOURAGES STRONGER SANCTIONS (91)

EdLiNC applauds the steps taken by the Commission to streamline the program integrity and to prevent whatever waste, fraud, and abuse there may be. However we caution against that the addition of unnecessary layers of bureaucracy to the program and urge that current protection measures are fully utilized. E-Rate is not a federal program, as it is not federally funded. We strongly caution the FCC against applying government wide regulations to E-Rate and involving the Department of Justice in any investigation. If E-Rate were to be classified as a federal program it could have adverse effect on the private school community or library community. Accepting E-Rate as a federal program would increase the number of stipulations that private entities would have to accept to sue the discounts.

EdLiNC also recommends that the Commission or SLD make available online the list of all individuals and entities debarred from participating in the E-Rate program because they have been convicted criminally or held liable civilly for actions arising out of participation in the E-Rate program, or because the Commission or SLD have determined that they have violated E-Rate program rules willfully and repeatedly. Ultimately, it should be the vendors who are accountable to the applicants. There should be steps taken to prevent the full participation of

those vendors that have been “willfully or repeatedly” violating the program’s rules. EdLiNC urges the FCC to adopt a graduated level of sanctions tied to the severity of the infraction. We hope that this would address the range of violations that could occur while not harming those inexperienced applicants who may make a mistake on their application. Additionally, EdLiNC urges the FCC to take into account the instances when it was an individual who violated the program rules versus the institution. If the institution takes steps against the individual at fault, leniency should be taken on the institution as a whole under the tiered sanction system.

EdLiNC supports the idea of a referral system for those persons suspected of “willful and repeated” violations with SLD identifying and the FCC investigating, which is similar to the current system under which E-Rate operates. We urge the Commission to maintain the due process protections for the person(s) under investigation. Wrongful disbarment could have a negative impact on the program as a whole.

EdLiNC also supports allowing applicants to change service providers if a provider has been found in violation of program rule, including when the request for provider transfer occurs prior to the issuance of a funding commitment. Although post-commitment changes could currently be accomplished, it is important for the streamlining of the application process to allow the applicant to take steps for the transfer of the service provider as soon as they realize there is a problem.

EDLiNC SUPPORTS INCREASED PROGRAM INTEGRITY AND PREVENTION OF WASTE, FRAUD AND ABUSE (97)

We support steps taken by the Commission to streamline the program integrity and to prevent whatever waste, fraud, and abuse there may be. Once again we would like to caution

against that the addition of unnecessary layers of bureaucracy to the program and urge that current protection measures are fully utilized.

EdLiNC would like to reiterate our recommendation that the Commission or SLD make available online the list of all individuals and entities debarred from participating in the E-Rate program because they have been convicted criminally or held liable civilly for actions arising out of participation in the E-Rate program, or because the Commission or SLD have determined that they have violated E-Rate program rules willfully and repeatedly. Ultimately, it should be the vendors who are accountable to the applicants.

We strongly support the dissemination of “best practices” in E-Rate and the telling of positive difference it has made for schools and libraries. EdLiNC is concerned about the definition of “best practice” as well as who would administer the initiative, and where financial support would come from. Reporting the positive difference E-Rate has made for schools and libraries is central to EdLiNC’s theme as a coalition. EdLiNC has published several reports which chronicle many examples of E-Rate’s positive impact on schools and libraries, which can be found at: <http://www.edlinc.org/resources.html>.

EdLiNC would also like to propose that SLD develop training and technology plan models that instruct applicants how to develop thoughtful and comprehensive technology plans. Such action could only be beneficial to applicants and vendors and ensure that SLD is receiving technology plans that meet the requisite standards.

CONCLUSION

EdLiNC appreciates the opportunity to comment about ways to strengthen and improve the E-Rate program, one that has been a vital part of the nation’s technology infrastructure for public and private schools and public libraries. We view the Commission’s Notice as an

endorsement of the importance of the program and the need to strengthen and protect its integrity.

APPENDIX A: MEMBERS OF EDLINC

EdLiNC is a coalition of educational and library groups that have been working together to provide schools and libraries with affordable access to telecommunications and to ensure the effective implementation of program. More information about EdLiNC is available from our website at <http://www.edlinc.org>. EdLiNC's members include:

American Association of School Administrators

American Federation of Teachers

Association of Educational Service Agencies

American Library Association

Consortium for School Networking

Council of Chief State School Officers

Education Legislative Services

International Society for Technology in Education

National Association of Elementary School Principals

National Association of Independent Schools

National Association of Secondary School Principals

National Association of State Boards of Education

National Catholic Educational Association

National Education Association

National Education Knowledge Industry Association

National PTA

National Rural Education Association

National School Boards Association

Organizations Concerned About Rural Education

Rural School and Community Trust

United States Conference of Catholic Bishops